

**CHUA CHEE CHOR v. CHUA KIM YONG  
& ORS.**[C. A. (Thomson C.J., Smith and Ong JJ.)  
August 22, 1959]

[K.L. — F.M. Civil Appeal No. 23 of 1958]

*Probate and Administration — Whether grant of Letters of Administration is conclusive evidence of ownership of assets set out in schedule forming part of grant — Object of granting Letters of Administration — Trengganu Probate and Administration Enactment ss.23 and 42 — Evidence Ordinance, s.41(2)(d).*

*Practice and Procedure — Action heard by one Judge who subsequently retired without delivering judgment — Judgment given by his successor without trying case de novo — All evidence recorded by retired Judge — Whether procedure irregular.*

In this case the learned trial Judge had held that the grant of Letters of Administration was conclusive evidence of ownership of the assets set out in the schedule forming part of the grant, and that the assets in the schedule were already adjudged and must be deemed the property of the deceased at the date of his death until the schedule had been amended or the Letters of Administration revoked. On appeal:—

**Held:** when the Court grants Letters of Administration it does not go into questions of title as to the assets alleged to be the property of the deceased at the time of his death, and that such a grant is not, by virtue of section 41(2)(d) of the Evidence Ordinance, conclusive proof that the property in the schedule to the grant was owned by deceased at the time of his death.

Per Thomson C.J.: "section 42 (of the Trengganu Probate and Administration Enactment) however, has to be read in the light of section 23 which provides that no petition for Letters of Administration can be opposed except on the ground that the petitioner is not the proper person to obtain administration and it seems impossible to argue that any provision of a general nature in the Evidence Ordinance can operate to extend the scope of section 42 to make a grant conclusive of a question which could not have been raised on the petition which led to it."

Observations of Thomson C.J. on the regularity of the learned trial Judge's procedure in giving judgment on the recorded evidence of his predecessor without hearing case *de novo*. Precedent not one to be followed.

**Cases referred to:—**

- (1) *Bolton v. Bolton* [1949] 2 All E.R. 908.
- (2) *Coleshill v. Manchester Corporation* [1928] 1 K.B. 776.
- (3) *Re British Reinforced Concrete Engineering Co. Ltd.'s application* 45 T.L.R. 186.
- (4) *Outram v. Morewood* 102 E.R. 630 at p. 634.
- (5) *Arunmoyi Dasi v. Mohendra Nath* (1898) I.L.R. 20 Cal. 888.
- (6) *Behari v. Juggo* (1878), I.L.R. 4 Cal. 1.

**COURT OF APPEAL.**

N. A. Marjoribanks for the appellant.

Maidin bin Mohamed Ibrahim for the respondents.

Thomson C.J.: This appeal arises out of an action brought by the administrator and certain beneficiaries of the Estate of one Chua Ah Chee, deceased, against one of the sons of the deceased.

The deceased died intestate at Singapore on 15th February, 1942, leaving five sons one of whom has since died. It was the case for the plaintiffs that prior to his death the deceased

A had for many years been carrying on a bicycle selling business in Kuala Trengganu under the name of Chop Chua Ban Seng with the aid of his five sons. After his death the business was carried on under the management of one of his sons, Chua Chee Chor, who was the defendant in the present proceedings with the assistance from time to time from the other sons. The evidence for the plaintiffs is not as clear as it might be but on it there is little room for doubt that the business was so carried on in accordance with the usual Chinese practice as to family businesses.

B Be that as it may for some years the sons seemed to have carried on the business in perfect harmony and no steps of any sort were taken to deal with the deceased's Estate.

C Eventually, however, differences arose and on 28th February, 1953, Chua Kim Yong who is one of the present plaintiffs applied for Letters of Administration. In his petition he set out the assets of the Estate as follows:—

|                                                |          |
|------------------------------------------------|----------|
| D Stock in trade of the business ... ..        | \$45,000 |
| Certain shares in the Union Bus Co. ... ..     | 5,100    |
| Certain shares in the Trengganu Bus Co. ... .. | 7,000    |
|                                                | <hr/>    |
|                                                | \$57,100 |

E When the petition came on for hearing Chua Chee Chor appeared. He said he had no objection to the appointment of Chua Kim Yong as administrator, but claimed that the assets set out in the Schedule of the petition were not assets of the Estate but his personal property.

F In the event Letters of Administration were granted to Chua Kim Yong and he and his brothers commenced the present proceedings against Chua Chee Chor.

G In these proceedings they claimed a declaration that the business known as Chop Chua Ban Seng and the shares in the two Bus Companies were the property of the deceased's Estate. They also claimed that certain land owned by Chua Chee Chor was the property of the deceased's Estate on the grounds that it had been purchased out of the profits of the business. They also claimed certain ancillary relief in the way of accounts.

H The case had an unfortunate history. It came on for hearing in October, 1954, before a Judge who heard all the evidence but who reserved judgment and was then obliged on medical grounds to retire before he could give judgment. In these unfortunate circumstances the normal course would have been for the case to be retried *de novo*. This, however, would have involved considerable expense and in the event the parties asked that Neal J., should decide the case on the evidence as recorded by his predecessor.

I For myself I have grave doubts as to the regularity of this course, particularly as there was a great deal of conflict of testimony in the case. It is only fair to say that Neal J., had considerable doubts himself. On the other hand

the case can be distinguished from the English cases of *Bolton v. Bolton*,<sup>(1)</sup> *Coleshill v. Manchester Corporation*<sup>(2)</sup> and *Re British Reinforced Concrete Engineering Co. Ltd.'s application*.<sup>(3)</sup> In all these cases part of the evidence was heard by the Magistrate or Judge who commenced the case and part was heard by the Magistrate or Judge who concluded it and gave judgment. In the present case, however, all the evidence was heard by Neal J.'s predecessor and Neal J., did not see or hear any of the witnesses. The parties themselves agreed to the case being decided on the evidence as recorded by Neal J.'s predecessor. Before us neither party has taken the point of irregularity and in the circumstances for myself I am not disposed to take the point although I would express my very strong view that the precedent is not one to be followed.

In the event Neal J., held that there was not a scrap of evidence to support the claim that certain land owned by the defendant was the property of the deceased's Estate. There is no complaint that this decision was not correct and regarding it I would only say that in my opinion it was clearly right.

As regards the claim that the business of Chop Chua Ban Seng and the shares in the two Bus Companies were the property of the Estate, Neal J., found in favour of the plaintiffs and against that decision the defendant has now appealed.

I do not think it is unfair to say that in arriving at his conclusions Neal J., based himself very largely on the view he took of the effect of the grant of administration to the first plaintiff read in the light of section 41 of the Evidence Ordinance. The petition for administration had exhibited to it a list of what was alleged by the petitioner to be the property of the deceased at the time of his death; the defendant was joined as a party to the petition; and therefore the grant of administration on the basis of the petition was conclusive against him as to the ownership of the property.

This view is about to be discussed at length by Smith J., whose judgment I have had the advantage of reading. With respect I agree with Smith J.'s conclusion that it is wrong and with his reasoning leading to that conclusion.

In England a grant of Letters of Administration is only conclusive as to the right of the grantee to represent the estate of the deceased and is not conclusive of any collateral matter (see *Williams on Executors*, 18th edition, p. 259). The reasons for that may well be connected with the historical distinction in jurisdiction between the Court of Probate and the Court of Chancery. In the State of Trengganu, however, the position is clearly the same by reason of the provisions of the local statute. Section 42 of the Trengganu Probate and Administration Enactment provides that Letters of Administration shall be conclusive as to the representative title of the grantees. From that alone it does not necessarily follow that they may not be conclusive as to

other matters for logically the converse of a universal affirmative proposition is not a universal negative proposition. Section 42, however, has to be read in the light of section 23 which provides that no petition for Letters of Administration can be opposed except on the ground that the petitioner is not the proper person to obtain administration and it seems impossible to argue that any provision of a general nature in the Evidence Ordinance can operate to extend the scope of section 42 to make a grant conclusive of a question which could not have been raised on the petition which led to it. In the present case it was not open to the defendant to do anything in relation to the petition that would in any way raise the issue of what in fact constituted the assets of the Estate. That question could only be litigated in subsequent proceedings to which the obtaining of administration was a necessary preliminary and that is just what has been done in the present proceedings.

Having arrived at that result it becomes necessary to consider the evidence without regard to the provisions of section 41 of the Evidence Ordinance. Here we are in exactly the same position to evaluate that evidence as was the trial Judge for he did not enjoy the advantage of having seen and heard the witnesses and had to decide the matter on the written evidence.

To my mind this presents little difficulty.

In the first place I agree with the trial Judge that there is not a scrap of evidence to show that the shares in the Union Bus Company have any connection with the Estate of the deceased.

In the second place on the written evidence it is to my mind abundantly clear that before the war the business of Chop Chua Ban Seng was the business of the deceased and that the assets of that business were the property of the deceased. It may be that the deceased went on pulling a rickshaw long after he started business but I find it wholly incredible that all his life he had been unable to set up any business of his own while on the other hand one of his sons, and this was the defendant's case, had been able to set up on his own in business at the age of 16. I think it is clear beyond doubt that the defendant took possession of the assets of the business and made use of them throughout the war and for some years afterwards without obtaining administration to the Estate. There is no question of fraud or imposition of any sort. Clearly somebody had to take charge during the war and it is very doubtful if it was possible to obtain administration during the war. After the war the other brothers were consenting parties and it is unfortunate that they have been unable to settle matters amicably. Nevertheless the defendant did take possession of the assets; he has enjoyed the benefit of them for his own purpose; and he ought to account for what he has had to the Estate.

In the third place I think it is clear on the evidence that the shares in the Trengganu Bus

Company Limited owned by the first defendant came into existence in substitution for the shares in the original unincorporated Trengganu Bus Company owned by the deceased and for these also in my opinion the defendant is bound to account.

In the circumstances I would vary the order made by the trial Judge to the following effect:—

(1) There should be an inquiry as to the composition and value of the assets of the business of Chop Chua Ban Seng at the date of death of the deceased, that is, at 15th February, 1942, and an order that the defendant pay the amount arrived at on such inquiry to the administrator with interest at the rate of 6% per annum.

(2) There should be an order that the appellant transfer to the administrator the shares held by him in the Trengganu Bus Company Limited and the dividends received by him from these shares since the formation of the Company, the amount of such dividends to be ascertained by inquiry by the Assistant Registrar.

As regards costs I think the costs of the original action should be paid by the present appellant. The appeal, however, has been partially successful and partially unsuccessful and I would make no order as to the appeal costs, except that the deposit in Court, if any, be paid out to the appellant.

Smith J.: This is an appeal by the defendant against so much of the judgment as is in favour of the plaintiffs.

The plaintiffs prayed for declarations that three particular assets were at the date of his death the property of one Chua Ah Chee.

Letters of Administration in the estate of the deceased were granted to the first plaintiff. The grant of Letters of Administration is in the form prescribed by the rules under the Probate and Administration Enactment of the State of Trengganu, Cap. 7. The operative part of the grant is as follows:—

"And be it further known that on the 27th day of June, 1953, administration of all the movable and immovable property in the Federation of Malaya which by law devolves to and vests in the personal representative of the said intestate was granted by this Court to Chua Kim Yong of 22, Jalan Banggol, Kuala Trengganu, the lawful son and one of the next-of-kin of the said intestate.

And be it further known that on the date hereunder written these Letters of Administration were issued to the said administrator he having given the security required by this Court for the due administration of the said property, a schedule whereof is hereunto annexed."

The schedule to the grant lists the assets referred to in the Statement of Claim.

The learned trial Judge has held that the grant of Letters of Administration is conclusive evidence of ownership of the assets set out in the schedule forming part of the grant, and that the assets in the schedule are already adjudged

A and must be deemed the property of the deceased at the date of his death until the schedule has been amended or the Letters of Administration revoked.

B I think there can be no doubt that a grant of Letters of Administration is a final order. The position in English law with regard to final judgment is clear. A judgment is final for its own proper purpose and object and no further. This is a statement of the law by Lord Ellenborough in the case of *Outram v. Morewood*<sup>(4)</sup> in which he developed his point in the following words, in 102 E.R. page 630 at page 634:—

C "A judgment, therefore, in each species of action is final only for its own proper purpose and object, and no further. The judgment in trespass affirms a right of possession to be, as between the plaintiff and defendant, in the plaintiff at the time of the trespass committed. In the real action, it affirms a right to the freehold of the land to be in the demandant at the time of the writ brought. Each species of judgment, from one in an action of trespass to one upon a writ of right, is equally conclusive upon its own subject matter by way of bar to future litigation for the thing thereby decided."

D It is therefore necessary first to decide what question the Court was called upon to determine when granting Letters of Administration to the first plaintiff. The Probate and Administration Enactment of Trengganu exists, according to its long title:—

E "To provide for the grant of Probates of Wills and Letters of Administration to the estates of deceased persons and to make provisions for the distribution of intestate estates."

F The object of granting Letters of Administration is clearly to enable the intestate's estate to be distributed. The effect of Letters of Administration is defined in sections 40 to 43. Section 40 makes the administrator the legal representative of the deceased person for all purposes and vests in him all the property of the deceased person. The grant enables the administrator to deal with what was the deceased's property.

G It has been argued that by virtue of section 41(2)(d) of the Evidence Ordinance, 1950, the grant until revoked is conclusive proof that the property in the schedule was the property of the deceased at the date of his death.

The parts of section 41 with which we are concerned read as follows:—

H "41. (1) A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or bankruptcy jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character or the title of any such person to any such thing is relevant.

I (2) Such judgment, order or decree is conclusive proof—

.....  
(d) that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property."

In relation to a grant of Letters of Administration the "any person" to which paragraph (d) refers is the administrator and the grant is conclusive that he is entitled to the property properly passing to an administrator from the date of the grant.

This particular section has been considered many times by the Courts of India and particularly in the case of *Arunmoyi v. Mohendra*.<sup>(5)</sup> In that case the Court held, at page 894, "that in a proceeding upon an application for probate of a will, the only question which the Court is called upon to determine is whether the will is true or not, and that it is not the province of the Court to determine any question of title with reference to the property covered by the will."

In the case of *Behary v. Juggo*,<sup>(6)</sup> at page 3, the Court said "... upon an application for probate of a will, as long as it is made *bona fide*, it is not the province of the Court to go into questions of title with reference to the property of which the will purports to dispose."

*Woodroffe's and Ameer Ali's Law of Evidence*, 9th edition, in discussing the above cases in relation to section 41 of the Indian Evidence Act, 1872, at page 421 says:—"A grant of letters of administration with the will annexed, does not make any question as to the title to property covered by, or as to the construction of the will, *res judicata* in a subsequent suit in which such title or construction comes in issue."

In the same manner it appears to me that when the Court grants Letters of Administration it does not go into questions of title as to the assets disclosed in the affidavit of the petitioner any more than it goes into the right of a testator to the property of which he purports to dispose in his will.

The principal object of the schedule to the grant of Letters of Administration appears to be for the purpose of ensuring that correct security is given. It does not prove the deceased's title to the property scheduled.

In this particular case the administrator has come to the Court seeking a declaratory order that certain property which he has included in the list of the deceased's assets was in fact the deceased's property. To that extent, therefore, the administrator is seeking the guidance of the Court in administering the assets of the deceased, a right which he has under section 69 of the Probate and Administration Enactment of Trengganu.

I consider therefore that as between the plaintiffs and the defendant it has never been *res judicata* that the property in the schedule to the grant was the deceased's property at his death.

I have had the benefit of reading the judgment of the learned Chief Justice and agreed with his view of the law, findings of fact and consequential orders, including the proposed order for costs.

A I would add that if it were not necessary in this case to decide whether the business belonged to the father or to his third son, the defendant, I would on the facts myself have held that the probabilities are that the business was started by the defendant with a very great deal of help from his father. During the lifetime of the father, the father was in effect the principal partner and was generally regarded in the district as the owner of the business. I think it probable that he did not regard himself as the sole owner because when he bought the shares in the Bus Company he bought them in the name of the Chop and not in his own name. I think the probabilities are that he intended when he died that the defendant should have the business. B This would be very natural since the probabilities are that the businesses of the other brothers had been started with capital provided by the father from the first business. Since, however, it is necessary to decide as a matter of probability whether the business belonged to the father or the defendant exclusively, I agree with the learned Chief Justice that the probabilities are in favour of the father and I therefore respectfully agree with him rather than with Ong J. whose judgment I have had the benefit of reading. C

D Ong J. agreed with the views expressed by Thomson C.J. and Smith J. on the question of law, but differed as to the finding of facts. E

*Order of trial Judge varied.  
Appeal allowed.*

Solicitors: *Lovelace & Hastings; Maidin bin Mohamed Ibrahim.*

## CHOW YOONG HONG v. TAI CHET SIANG

[J. C. (Lord Goddard, Lord Jenkins and the Rt. Hon. L. M. D. De Silva) October 8, 1959]

[Privy Council Appeal No. 35 of 1958]

G *Contract—Sale of house—Deposit in earnest—High price—Purchaser unwilling to pay balance of purchase money until title to property had been checked by Solicitor—But anxious to complete purchase at all material times—Time not the essence of contract—Contract not repudiated by purchaser—Vendor not entitled to forfeit deposit.*

H In this case the plaintiff (respondent) sued the defendant (appellant) for the return of a deposit of \$5,000 paid by the plaintiff to the defendant as a deposit under a contract entered into between the parties for the sale by the defendant to the plaintiff of a house in Kuala Lumpur.

I The defendant opposed the plaintiff's claim on the ground that the bargain had gone off through the plaintiff's default and that circumstances had accordingly arisen in which he was entitled to forfeit the deposit. The defendant's case seemed to rest substantially on the contention that the plaintiff had repudiated his bargain because he came to the conclusion that the price he had agreed to pay was too high, and indeed it was said by the defendant that at a particular interview of the 29th February, 1956, the plaintiff had definitely refused to complete. The plaintiff on his part denied that the alleged interview ever took place. He further maintained that at all material times he was ready and